

# The Odisha Gazette

**EXTRAORDINARY  
PUBLISHED BY AUTHORITY**

---

**No. 434 CUTTACK, SATURDAY, MARCH 17, 2012/FALGUNA 27, 1933**

---

**DEPARTMENT OF ENERGY**

**NOTIFICATION**

The 3rd March 2012

No. 1904—R&R-III-43/2011-En.—The State Government in the Department of Energy had framed guidelines for laying cable network for Cable TV operation vide Energy Department Notification No. 18271, dated the 11th October, 2001 and No. 148, dated the 4th January, 2002.

The provisions relating to Clause 16 of the guidelines of "One Pole One Cable" of the said notification was challenged in the Hon'ble High Court in W.P. (C) No. 11762 of 2006 by M/s Variety Entertainment (Pvt.) Ltd. The Hon'ble High Court in an interim order, dated the 6th November, 2006 referred the impugned guidelines to Odisha Electricity Regulatory Commission (O.E.R.C.) for detailed examination on the issues framed by the Hon'ble Court. The O.E.R.C. after hearing the parties and considering the views of experts submitted its report, dated the 8th January, 2007 to the Hon'ble Court recommending use of single optic fibre cable by multiple operators for optimum utilisation of national assets.

The Hon'ble High Court while finally disposing of the W.P. (C) No. 11762 of 2006 on dated the 16th May, 2008 held that the agreement entered into between Distribution Companies and one Cable Operator are not consistent with the requirements of law, hence, are invalid and directed the State Government to issue necessary guidelines for setting up the norms and standards for selecting Cable Operators who will operate their cable network through the electrical poles of distribution licensee so as to ensure level playing field.

The Hon'ble High Court have further observed that it is always open to the State Government and its agencies to make periodical review of its policy and bring changes in any manner it may think appropriate.

In the above backdrop, a Technical Committee was constituted comprising officials from Telecommunication, Electrical and Finance discipline. The Committee visited several States and submitted their reports stating that multiple cables (both Optical Fibre Cable and Coaxial) have been drawn in a single electric pole by different cable operators.

Keeping in view the aforesaid observations of the Hon'ble High Court and Technical Committee report, the State Government reviewed the guidelines issued vide Notification No. 18271, dated the 11th October, 2001 and No. 148, dated the 4th January, 2002 and decided that the stipulation of

running one cable alone on one electric pole be withdrawn and desired to allow cable operators to run more than one cable in one electric pole for the reasons to allow level playing field to all operators in order to ensure better deal to the consumer for the reasons that :—

- (i) advancement in technology has reduced the weight of signal carrying cables;
- (ii) because of the advancement of technology, the possibility of signal interference with each other in two closely placed Coaxial Cables has reduced to a manageable limit, whereas, the same does not exist in Optical Fibre Cables;
- (iii) as Telecom Regulatory Authority of India (T.R.A.I.) has always been considering the promotion of fair competition in Cable TV services for the benefit of the general consumers; and
- (iv) as per the report of the Technical Committee revealed that multiple cables (both Optical Fibre Cable and Coaxial) have been drawn in one electric pole by different cable operators in several States.

Considering the above, Government of Odisha issued Cable TV Guidelines vide Notification No. 4844—R&R-III-45/2008, dated the 30th April, 2009. The said guidelines were subsequently challenged before the Hon'ble Odisha High Court in W.P. (C) Nos. 10059 and 7745 of 2009. The Hon'ble High Court while disposing of the same directed the Government of Odisha to consider the following three issues :

- (i) The "Swiss Challenged Method" may be adopted for the purpose of selection of the M.S.Os.
- (ii) The M.S.Os. shall deposit lease rental for a period of 3 years in advance at the time of submission of the financial bid and in the event, any such M.S.O. withdraws from the bid, such amount shall be forfeited.
- (iii) The procedure to be adopted in the event of second and third highest bidder refuse to accept the highest bid.

Keeping in view the observations of Hon'ble Odisha High Court, the GoO hereby issues amended guidelines to lay cables on the electric poles for cable TV operation, internet access and other uses. It consists of three parts; first part relating to selection of Multi Service Operator (M.S.O.); the second part relating to Local Cable Operator (L.C.O.) and third part containing general conditions.

#### PART-I

##### **Multi Service Operator (M.S.O.) :**

1. Distribution Company shall invite Expression of Interest (EoI) from intending M.S.Os. to lay Optical Fibre Cable in inter and intracity main trunk routes on Build, Own and Operate (BOO) model for a period of fifteen years by using the network of Distribution Companies for multipurpose uses such as Cable TV signal transmission broadband data communication, IP telephony, etc. The detail bidding documents for inviting Expression of Interest envisaging the minimum net-worth and other financial, commercial and technical parameters shall be prepared by the respective Distribution Companies based on commercial prudence and eligibility criteria contained in this guideline.

2. The Distribution Companies will shortlist M.S.Os. after evaluation of their experience, net-worth, credit-worthiness, etc. by assigning reasons. Thereafter, the price bid may be invited from

amongst the shortlisted M.S.Os. The bidder offering highest bid shall be selected along with other bidders in total three in order of merit as per original financial bid subject to their agreement and acceptance of the highest bidding price. The two M.S.Os., other than the highest bidder, if agree and accept the highest bid for the entire area then they being selected will be allowed to operate along with highest bidder. In the event, the 2nd, 3rd and subsequent bidders do not agree to match the highest bid, the DISCOM is free to go for a fresh bid. If in the second attempt no bidder agrees to match the price of the highest bidder of the first round, the DISCOMs may explore other options to select the remaining two M.S.Os. without compromising the lease rental quoted by the highest bidder of the first round.

3. The M.S.Os. should offer their bid towards lease rental of all electric poles of distribution licensee for the entire area. Initially, the payment of lease rental shall be made by M.S.Os. for the period of three years in advance in one go. The three years lease rental should be deposited in advance by way of Demand Draft drawn in favour of DISCOM issued by a Scheduled Bank payable at Bhubaneswar/Hqrs. of DISCOMs along with the financial bid in a sealed cover. Other than H1 bidder, other bidders who agreed to match the H1 price are required to deposit the balance amount within 10 days from the date of acceptance of H1 offer by them. In the event of any such bidder withdrawing from the bid, such amount shall be forfeited. Thereafter, it shall be paid annually in advance. The M.S.O. shall not sub-lease the right to any other person.

4. While inviting Expression of Interest from the intending M.S.Os., the Distribution Companies may decide the percentage of strands of the Optical Fibre Cable to be earmarked by M.S.Os. in favour of Distribution Companies free of cost for their own use for Supervisory Control and Data Acquisition (SCADA) or for any other purpose.

5. One M.S.O. shall not sell signal and give Right of Way (RoW) for using electric poles for laying cables to more than one L.C.O. in any particular area.

6. The M.S.Os. shall lay Optical Fibre Cable following the Technical Standards and Safety Guidelines issued by Government of Odisha and Distribution Company. Utmost care has to be taken for the safety of the workmen of both the Distribution Companies and that of the operators and the general public as well. M.S.O. shall also ensure safety and security of all installations of the Distribution Companies for which they have been allowed to run their cable networks. M.S.O. shall also comply with the Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulation, 2010 as amended from time to time and other relevant norms for safety and security related to such installations.

7. The M.S.O. shall arrange inspection of all its installations before completion of each financial year by the concerned Electrical Inspector of the area and submit the certificate to the concerned Distribution Companies before the commencement of next financial year, failing which the M.S.O. shall not be allowed to carry out its operation along with other statutory actions as provided in the Rules.

8. The other mode of Right of Way (RoW) wherever required to lay cables (other than in electric pole) in certain places like road crossing, river crossing, etc. should be obtained by the M.S.Os. from the Competent Authorities.

9. If the Municipal Authority/Gram Panchayat for the purpose of beautification or for any other reason decides that the cable shall be laid underground in any particular area, then the decision of Municipal Authority/Gram Panchayat will be binding on M.S.O./L.C.O. In case, any shifting or alteration

in the position of the laid cable is required due to shifting of poles because of widening of roads, construction of flyovers, etc. the M.S.O. shall do the same at its own cost within a specified period.

10. The DISCOMs may adopt Swiss Challenge Method for selecting 3 M.S.Os. as per the direction given by the Hon'ble Odisha High Court vide Order, dated the 21st July 2010 in W.P. (C) Nos. 10059 and 7745 of 2009. In such case the existing cable operator will be given an opportunity to match the highest bidding price. If it matches the same, one more M.S.O. will be selected instead of selection of two more M.S.Os. in the manner described at Clause 2 above.

#### **11. Minimum Eligibility Requirement of M.S.O. :**

The M.S.O. shall have :—

- (i) to be atleast a 'C' Class Internet Service Provider (I.S.P.);
- (ii) license as granted by the Department of Telecommunications, Government of India, as it is required for the Broadband Communication Services;
- (iii) a valid postal license for the distribution of the Cable TV signal as per the Cable Television Network (Regulation) Act, 1995 and all the Rules made thereunder;
- (iv) past experience of minimum period of 3 years for Cable TV distribution service and/or Broadband Service;
- (v) matching technical standards set by the Bureau of Indian Standards (BIS) for Cable TV network;
- (vi) Service Tax Registration by the Central Excise and Customs Department;
- (vii) Entertainment Tax Registration as per the Government of Odisha Rules;
- (viii) No Due Certificate on payment of Inspection Fees, Electricity dues, etc. from the concerned authorities.

#### **PART-II**

#### **Local Cable Operator (L.C.O.) :**

1. L.C.O. will be selected by M.S.O. who will be receiving the signal from M.S.O. and distribute the same to the last mile subscribers at their premises in residential/commercial areas. The M.S.O. will grant Right of Way (RoW) to only one L.C.O. in a particular area for laying Coaxial/Optical Fibre Cables by using the electric poles.

2. In case the L.C.O. requires any other means for carrying the cables other than the poles of Distribution Companies, the permission from Competent Authority shall be obtained by the L.C.O.

3. If the Municipal Authority/Gram Panchayat for the purpose of beautification or for any other reason decides that the cable shall be laid underground in any particular area, the decision of Municipal Authority/Gram Panchayat will be binding on the L.C.O. In case any shifting or alteration in the position of the laid cable is required due to shifting of poles because of widening of roads, construction of flyovers, etc., the M.S.O. shall do the same at its own cost within specified period.

4. The L.C.O. shall lay Coaxial Cable/Optical Fibre Cable following the Technical Standards and Safety Guidelines issued by Government of Odisha and Distribution Company. Utmost care has to be taken for the safety of the workmen of both the Distribution Companies and that of the

operators and general public as well. L.C.O. shall also ensure safety and security of all installations of the Distribution Companies for which they have been allowed to run their cable networks. L.C.O. shall also comply with the Central Electricity Authority (Measures relating to Safety and Electricity Supply) Regulation, 2010 as amended from time to time and other relevant norms for safety and security related to such installations.

5. The L.C.O. shall arrange inspection of all its installations before completion of each financial year by the concerned Electrical Inspector of the area and submit the certificate to the concerned Distribution Company before the commencement of next financial year, failing which the L.C.O. shall not be allowed to carry out its operation along with other statutory actions to be taken as provided in the Rules.

#### **6. Minimum Eligibility Requirement of L.C.O. :**

The L.C.O. shall have :—

- (i) a valid postal license for the distribution of the Cable TV signal as per the Cable Television Network (Regulation) Act, 1995 and all the Rules made thereunder;
- (ii) matching technical standards set by the Bureau of Indian Standards (BIS) for Cable TV network.
- (iii) Service Tax Registration by the Central Excise and Customs Department;
- (iv) Entertainment Tax Registration as per the Government of Odisha Rules;
- (v) No Due Certificate on payment of Inspection Fee, Electricity dues, etc. from the concerned authorities.

### **PART-III**

#### **General Conditions :**

1. The selected M.S.O. would enter into an agreement with the distribution licensee for a period of 15 years with provision that the terms and conditions including rates shall be reviewed after every 5 years.

2. The rights vest with the Distribution Company to terminate the agreement even before the expiry of the terms and conditions of the agreement in case of any default or breach of any term and condition if it is found in any way detrimental to the interest of the Distribution Company or the State's interest after giving reasonable opportunity of show-cause.

3. In case of any differences or disputes relating to or arising out of the above agreement, the same shall be referred to Distribution Company for decision at the first instance. If the Distribution Company and the licensee cannot settle the issue amicably, then, the same shall be referred to Government in Energy Department, whose decision shall be final and binding on both the parties.

4. Any financial loss caused to the Distribution Company while installing the cable either by damage to Distribution Company's properties or power failure has to be compensated by the M.S.O.

5. The M.S.O. will indemnify and keep the Distribution Company non-liaible against any expenses that may be incurred in connection with any suit or other proceeding filed in any court or before any

authority in respect of any matter related to and/or arising out of the distribution of signal of such operator using the poles of Distribution Company.

6. M.S.O. will also indemnify and keep the Distribution Company non-liaable against any claim or damages payable towards any accident to the employee of M.S.O./L.C.O. or to public person due to such installation by M.S.O./L.C.O.

7. Any deviation or breach of the guideline will entail cancellation of agreement

8. Any dispute arising between Distribution Companies, M.S.Os. and L.C.Os. shall be adjudicated by the Courts located at Bhubaneswar and Cuttack only.

9. All the notifications, guidelines, circulars issued earlier in this regard are hereby superseded/ repealed.

By order of the Governor

G. MATHI VATHAN

Commissioner-*cum*-Secretary to Government